REMARKS

Claims 18-34 stand rejected under 35 USC 101 as being directed to non-statutory subject matter.

Particularly, the Examiner alleges that these claims are directed to software and asserts that the Federal Circuit's *Bilski* opinion stands for the proposition that a program that runs on a computer is not directed to a patent eligible subject matter. For example, on page 4, lines 15-18, of the Action, it is alleged that "at least one embodiment of the invention may be implemented by software. Thus, the 'units configured to' perform particular functions, recited in claim 18 encompass software (a program) only. Programs, per se, are not patent eligible subject matter, therefore claim 18 is rejected for this reason." Applicants respectfully disagree with the Examiner's interpretation of the claims and understanding of the *Bilski* decision.

Claim 18 is not directed to a patent ineligible process without a physical component as the Examiner alleges. Rather, claim 18 recites "a device" comprising a receiving unit configured to receive present data, a storing unit configured to store a plurality of reference patterns, etc. Thus, claim 18 is directed to a product, not to "a process" within the meaning of 35 USC 101. Accordingly, the machine-or-transformation test mentioned in *Bilski* does not apply to claim 18. Likewise, claims 19-25 each recite "a device," and the machine-or-transformation test does not apply to these claims.

Further, claim 18 recites a device having "a storing unit configured to store a plurality of reference patterns." In light of the specification, those skilled in the art would have recognized that the recited storing unit comprises a hardware component for storing information. Thus, applicants respectfully request that this rejection be withdrawn from claims 18-25.

Similarly, while claims 26-33 are directed to method claims, these claims recite "storing a plurality of reference patterns." Those skilled in the art would have recognized that this storing step involves the use of a particular machine. Accordingly, the machine-or-transformation test of *Bilski* is satisfied, and applicants respectfully request that this rejection be withdrawn from claims 26-33.

Further, claim 34 is directed to a computer readable recording medium. The Examiner alleges that a computer readable recording medium is not a tangible and/or physical object. Applicants respectfully disagree. A computer readable recording medium is a tangible and/or physical object. For example, the specification discloses a hard disk drive, an example of a computer readable recording medium that is a physical object. Accordingly, applicants respectfully request that this rejection be withdrawn.

Claims 18, 19, 21-27 and 29-34 stand rejected under 35 USC 103(a) as obvious over <u>Ohhashi</u> (EP 0389992, filed by Kabushiki Kaisha Toshiba) in view of <u>Geva</u> (US 2004/0073098).

Applicants respectfully traverse this rejection because neither <u>Ohhashi</u> nor <u>Geva</u> discloses or suggests the recited calculating unit or the step of calculating a value indicative of a distance between a position of a first reference pattern and a position of the second reference pattern in the reference patterns as recited in the claims.

For example, claim 18 recites "a selecting unit configured to select, *from the reference patterns*, a first reference pattern best matching with the present data and a second reference pattern best matching with the previous data" and "a calculating unit configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern *in the reference patterns*" (emphasis added). Applicants hereby provide a schematic diagram illustrating the relationship among the first reference pattern, the second reference pattern and the distance.
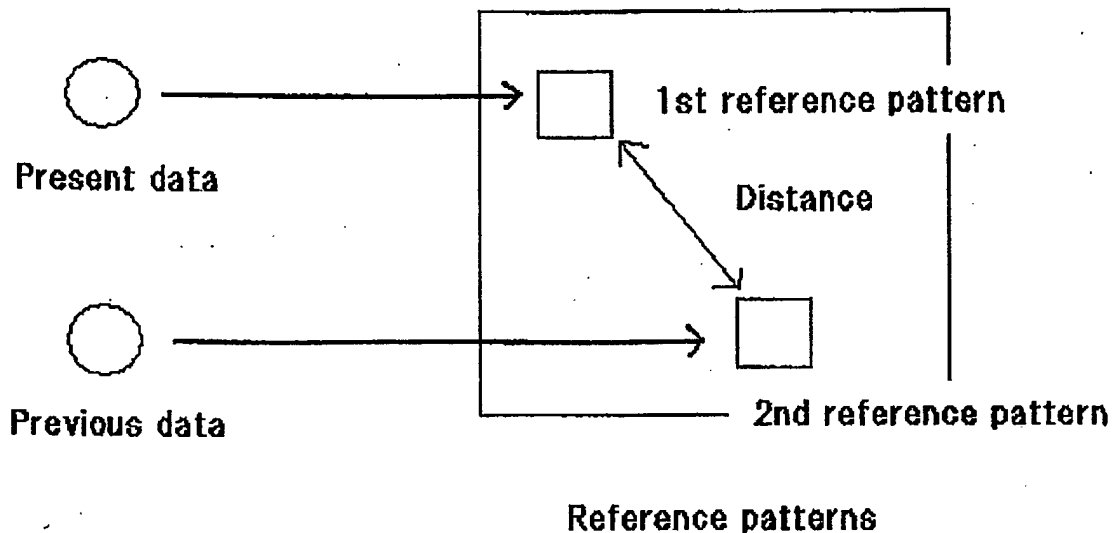
Figure 1 Reference patterns and the distance

As illustrated above, the recited "distance" refers to the distance between the reference patterns. Neither Ohhashi nor Geva discloses or suggests the recited "calculating unit configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the reference patterns" as claimed.

For example, Geva discloses a method involving "comparing the signal [having a resemblance to a heart beat] to a reference 'Template No.1,' which is initialized with a universal reference shape" (Geva, paragraph [0100]), "'Template No. 1' [being] assigned the characteristics of PSUHB in order to utilize it as the unique reference of the person being monitored" (Geva,

paragraph [0101]). This method of Geva does not involve calculating a value indicative of a distance between the templates. Rather, in Geva, a template is compared with a signal of the person being monitored. Thus, Geva does not disclose the recited calculating unit. As the Examiner admits, Ohhashi also fails to disclose or suggest the same (Action, page 8, lines 1-4).

Accordingly, none of the cited references discloses or suggests the recited "calculating unit" of claim 18. Thus, claims 18-25 would not have been obvious in view of Ohhashi and Geva. Similarly, claims 26-34 recite the step of calculating a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern, and would not have been obvious. Thus, this rejection should be withdrawn.

Claims 18-34 stand rejected under 35 USC 103(a) as obvious over Ohhashi and Geva, as applied to claims 18, 19, 22-27 and 30-34, and further in view of Loki (Japan Association of Medical Information, 2002, 14 November, 211-213).

In particular, the Examiner relies on Geva to disclose the recited calculating unit and/or the step of calculating a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern as recited in the claims. As stated above, Geva fails to disclose or suggest the same. Since Loki also fails to disclose or suggest the same, this obviousness rejection should be withdrawn.
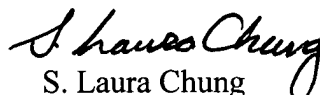
In view of the aforementioned amendments and accompanying remarks, claims 18-34 are in condition for allowance. Accordingly, applicants respectfully request an early action passing this application to issue as a patent. In the event that the Examiner determines that the prosecution of this application may be expedited by a telephone conference, the Examiner is invited to telephone the undersigned at the number provided below.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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